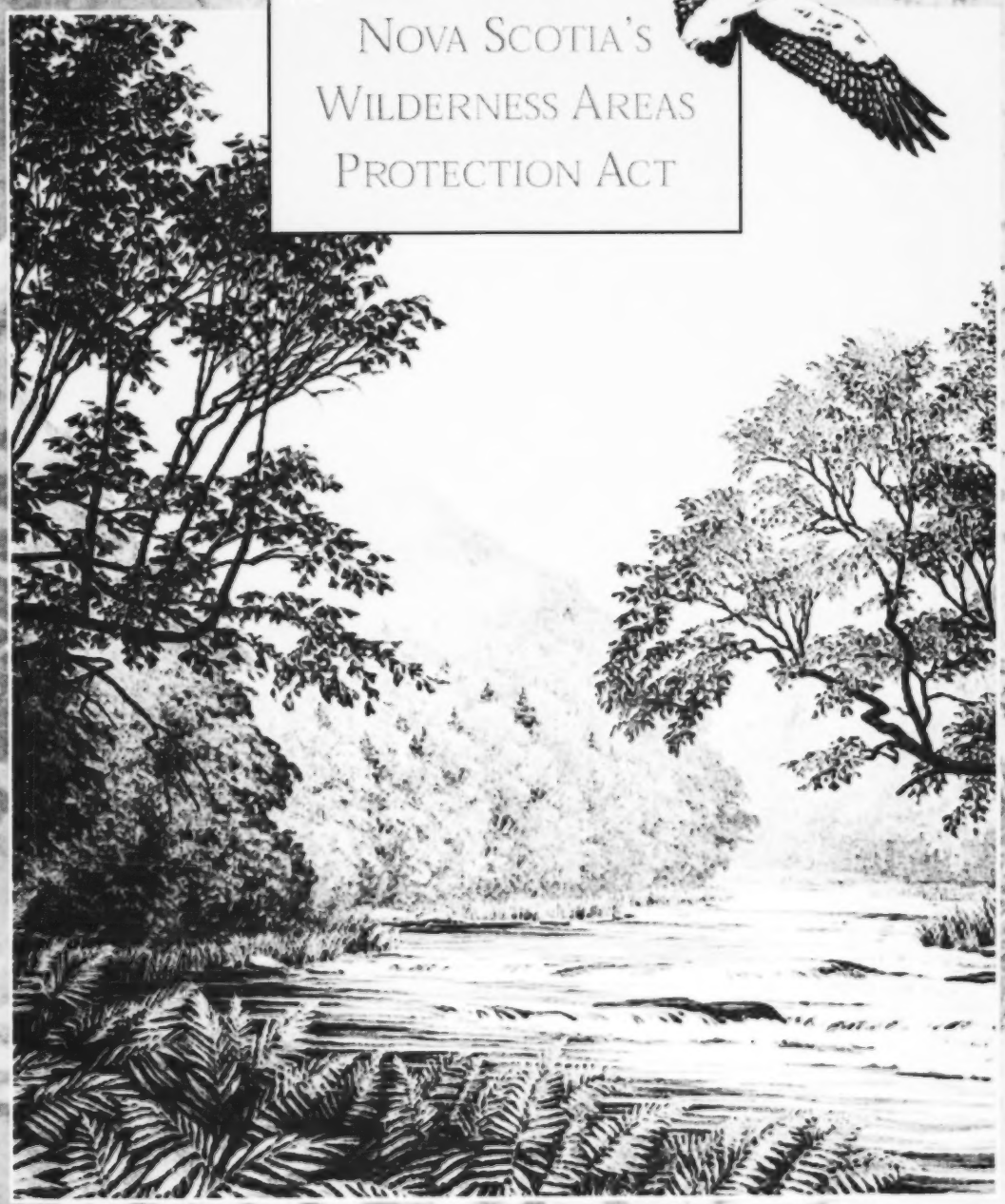
Protecting Wilderness

A Summary of Nova Scotia's Wilderness Areas Protection Act



NOVA SCOTIA
Environment and Labour

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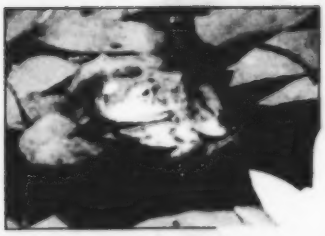
Photo: Oliver Maass

Nova Scotia's Wilderness Areas

1 Polletts Cove–Aspy Fault
2 Margaree River
3 Jim Campbells Barren
4 French River
5 Sugarloaf Mountain
6 Middle River
7 North River
8 Trout Brook
9 Middle River–Framboise
10 Gabarus
11 Scatarie Island

12 Ogden Round Lake
13 Bonnet Lake Barrens
14 Canso Coastal Barrens
15 Liscomb River
16 The Big Bog
17 Alder Grounds
18 Boggy Lake
19 Tangier Grand Lake
20 White Lake
21 Clattenburgh Brook
22 Waverley–Salmon River Long Lake
23 Terence Bay
24 Economy River
25 Portapique River
26 Cloud Lake
27 McGill Lake
28 Lake Rossignol
29 Tobeatic
30 Tidney River
31 Bowers Meadows



A Summary of Nova Scotia's Wilderness Areas Protection Act

Nova Scotia's Wilderness Areas protect some of our most outstanding, remaining wild spaces. These areas are designated under the *Wilderness Areas Protection Act*, and are managed by the Nova Scotia Department of Environment and Labour (NSDEL), in partnership with the Department of Natural Resources (NSDNR), and through agreements with community groups and other organizations.

The *Wilderness Areas Protection Act* (hereafter referred to as the Act), establishes a legal framework for planning and managing wilderness areas. This summary provides an overview of the Act, which should be useful to the interested public and resource managers. It is only a guide—not a legal document. It is not intended to be a complete description of the contents of the Act.

Please note that regulations, orders and policies can be established under the Act to guide the planning and management of wilderness areas, and that these are not described in this summary.

Photo: Oliver Maass

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Sections of the Act are referenced in brackets within the text (for example, s.11(2) = subsection 2 of section 11).

To request a copy of the Act, or for other information on Nova Scotia's wilderness areas, please see contact information on the back page.

This summary may be photocopied, provided it is not sold for profit and acknowledgment is given to NSDEL

DESIGNATION AND MANAGEMENT

Purpose of the Act

The *Wilderness Areas Protection Act* provides the legal framework for establishing, managing, protecting and using Nova Scotia's designated wilderness areas. The Act's primary objectives are to protect natural processes, biological diversity and outstanding natural features. The secondary objectives are use related. Activities such as wilderness recreation, environmental education and scientific research are encouraged. Sport fishing and traditional patterns of hunting and trapping are also generally permitted.

Photo: Oliver Maass

Administration

The Act came into effect on December 3, 1998 for 30 of 31 wilderness areas. For Polletts Cove—Aspy Fault Wilderness Area the effective date was June 30, 1999 (ss 11(2), 40).

Regulations may be made under the Act to improve administration of the Act, or to control specific activities for purposes that are consistent with the intent of the Act (s. 39).

The Act applies to all persons, which also means organizations and government agencies and their employees. A person may be subject to prosecution, orders and other remedies under the Act (s. 4).

Where there is a conflict between a provision of this Act and any other Act, this Act prevails (s. 5). A conflict exists where obeying one law would result in violating another; however, there is no conflict or inconsistency when another enactment merely contains a stricter provision.

The Minister of Environment and Labour (hereafter referred to as the Minister) is responsible for this Act and the wilderness areas are lands administered and controlled by the Minister. The Minister may delegate certain powers (s.6).

Designation

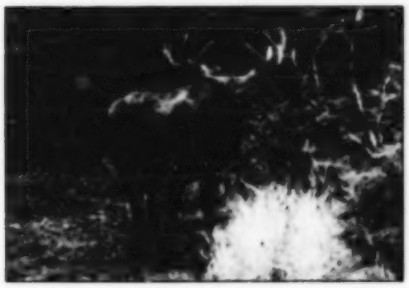
As of publication of this summary, the Act designates 31 wilderness areas (s. 11), and also establishes a process and conditions for altering boundaries and/or designating additional lands. (s. 11). The Act also requires a socio-economic analysis for new wilderness area proposals for Crown land (s. 15(4)). Wilderness areas cannot be converted to provincial or federal park status (s. 13). Designations cannot be revoked, except by an Act of the Legislature (s.11(5)).

If a private landowner gives consent, privately-owned lands can be designated as, or added to, a wilderness area and can therefore be managed as a wilderness area. The consent can be for a specific term of years or perpetuity. Unless the consent specifies otherwise, the Act and Regulations apply (ss. 11, 14).

Boundaries may be altered in wilderness areas on Crown land only if the following conditions are met (s. 11):

1. The alteration is consistent with existing management plans;
2. The alteration provides more effective management and increased protection, or adjacent landowners or nearby residents successfully demonstrate to the Minister that the existing boundary results in undue hardship on the owner(s) or the residents; and
3. Public notice/consultation has been provided.

The official wilderness area boundaries, as described in Schedule A and B of the Act, are shown on plans filed with the Provincial Crown Lands Record Centre, NSDNR. Boundaries can be corrected to more accurately reflect the actual surveyed boundary or to correct an error or omission made in drawing the boundaries (s.12).



Private In-Holdings

Privately owned lands that are surrounded by a wilderness area, or by a wilderness area and a watercourse or the ocean, are not governed by the Act. Where there is no lawful access by land, the Minister must issue a license (permit) to the owner allowing for limited access, subject to conditions (s. 26). Where an owner is not satisfied with the access provided by the license, the Act does not prevent the owner from making a claim for compensation under the *Expropriation Act* (s. 38).

Compensation

If a person is negatively affected by decisions or actions made pursuant to the Act or regulations, he/she may seek compensation for fees, rentals and expenditures incurred. No compensation shall be provided for:

1. loss of income or profit,
2. anticipated income, profit, products or opportunities, or
3. the value of anything in or on or under the land (s. 37).

No claim can be made under the *Expropriation Act*, except in the case of persons who own private in-holdings (see above), and who are not satisfied with the access to that land which the Province is willing to provide (s. 38).

Adjoining Lands

None of the penalties, prohibitions, etc. under the Act apply to the lands adjoining wilderness areas. Complementary planning and management of land adjoining or affecting wilderness areas will be encouraged (s.16). Landowners of private property adjacent to or affecting wilderness areas will be encouraged to participate in voluntary stewardship in a manner consistent with wilderness area objectives. Management of adjacent provincial Crown lands will be addressed through the Department of Natural Resources' Integrated Resource Management (IRM) process and/or through management planning processes for individual wilderness areas. (For information on the IRM process, please contact your nearest Department of Natural Resources office.)

Photo: Oliver Maass

Agreements

The Minister may enter into an agreement with any government agency or with any person (including an organization), for any purpose within the Act or regulations (s.9). (For example, an agreement with a community group to construct and manage a hiking trail).

Management Plans

Management plans shall be prepared to guide the protection, management or use of wilderness areas. The Act defines management plans broadly to include plans that apply to all or part of specific wilderness areas, or any action or activity undertaken to manage a specific wilderness area. Public consultation is required during preparation or revision of management plans (s. 15). The Act does not provide a timetable for management planning.

Public Consultation

The Act includes provisions for appropriate public consultation in the following instances:

1. Development of policies, programs, standards, guidelines, objectives, plans, codes of practice, directives and approval processes (s. 10);
2. Development of regulations or significant amendments to regulations (s. 39);
3. Preparation of management plans and revisions (s. 15); and
4. Proposals for new wilderness area designations on Crown land or boundary changes on Crown land (s. 11).

Access to Information

The public has access to all information relevant to the Act that is filed in the Department of Environment and Labour's Environmental Registry. The list of documents that must be filed includes licenses, orders, convictions, penalties, policies and management plans (see s. 10 (4)). For inquiries, contact the Environmental Registry Coordinator, NSDEL, PO Box 697, Halifax, NS, B3J 2T8; tel. (902) 424-2549. The public may also request access to documents which are not in the Environmental Registry. For inquires, contact: Freedom of Information and Protection of Privacy Act (FOIPOP) Administrator (same address); tel. (902) 424-8472.

ACTIVITIES

Prohibited Activities

Commercial resource development (for example, mining, forestry, aquaculture, dams, pipelines, etc.) is absolutely prohibited (s. 17), except where pre-existing commitments were made (for example, existing mineral licenses, existing utility corridors) (s. 25).

Other activities (for example, building or operating a structure, agriculture, roads, railways, altering the surface of the land, damaging plants and animals, removing natural materials, littering) are also generally prohibited (s. 17), except where they are specifically allowed (ss. 18-25). Examples of these specifically allowed exceptions are further described below under the headings: ***Environmental Education; Scientific Research; Wilderness Recreation; Tenting, Camping and Camp Fires; Trails and Facilities; Fishing, Hunting and Trapping; Vehicle Use; Other Activities; and Pre-Existing Interests.***

Environmental Education

Environmental education and natural history interpretation are generally permitted and encouraged. These activities must, however, be carried out in a manner consistent with the Act and Regulations and relevant management plans, and they must not degrade the area (s. 20).

Scientific Research

Scientific research requires a license to ensure that research is consistent with wilderness area objectives. The license may permit activities that may otherwise be prohibited. Research activities must not degrade the wilderness area (s. 21).

Wilderness Recreation

Wilderness recreation activities which have minimal environmental impact, such as walking, hiking, canoeing, kayaking and cross-country skiing, are generally permitted in wilderness areas. Activities may be temporarily restricted where measures for the protection of property, the environment or people are necessary (for example, nesting periods for rare species, fire hazards) (s. 22).

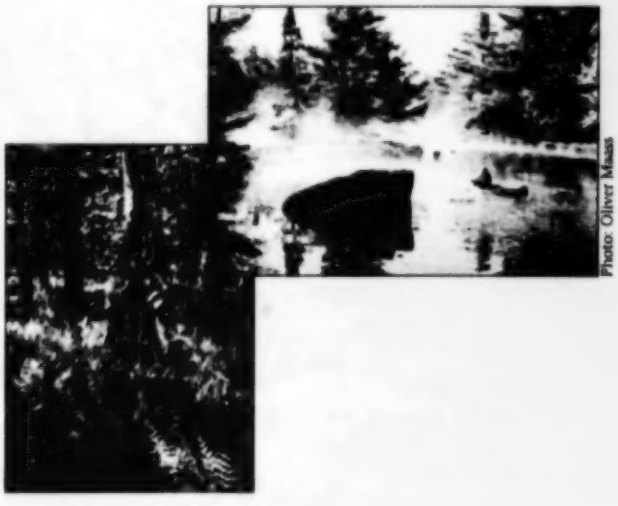


Photo: Oliver Mass

Tenting, Camping and Camp Fires

Tenting, camping or building a fire is permitted at designated sites, or where no sites are designated, according to guidelines and conditions established by a license or order issued by the Minister (s. 23).

The Minister issued an *Order on Camping and Lighting of Fires in Designated Wilderness Areas* in March, 2001. The terms and conditions of this order are included in the brochure, *Keep it Wild— A Guide for Low Impact Recreation in Nova Scotia's Wilderness Areas* (to obtain a copy of this brochure, please see back page).

Existing campsite leases which were originally authorized by the Department of Natural Resources are considered pre-existing interests (see next page).

Fishing, Hunting and Trapping

Sport fishing and traditional patterns of hunting and trapping are permitted, provided these activities are consistent with the Act and the Regulations, any applicable management plan, and any other applicable laws (s. 24). Also, these activities may be temporarily restricted to protect property, the environment or the health and safety of humans.

Trails and Facilities

The Minister may establish or authorize wilderness trails for non-motorized wilderness recreational use (for example, trails or routes for walking, hiking, canoeing, kayaking, cross-country skiing). Wilderness recreational facilities may be authorized, if required for the management and use of wilderness areas (for example, camp sites, warden cabins, footbridges) (s.23(2)). The Minister may require trails to be realigned or rerouted (s. 23 (6)).

Photo: Oliver Mass

Vehicle Use

Use of bicycles and motorized vehicles, such as snowmobiles, all-terrain vehicles and motorboats, is only permitted in wilderness areas on a limited or exceptional basis.

A. Snowmobiling may be permitted on designated trails. A snowmobile trail can only be designated if the following conditions apply (s. 23(3)):

1. The trail existed before February 9, 1993 (for new wilderness areas, use the date of designation);
2. The trail is an essential link with a more extensive snowmobile network outside the wilderness areas; and
3. Continued use will have minimal environmental impact (s. 23(3)).

B. All other vehicle use, as well as bicycle use, may only be permitted by individual license (permit), and only in limited and exceptional circumstances:

1. Where necessary, to gain access to a pre-existing, approved campsite (i.e. back-country cabin or 'camp') (s. 23(4)); and
2. In limited circumstances, to gain access for wilderness recreation, sport fishing, or traditional patterns of hunting or trapping on a route that existed before February 9, 1993, or for new wilderness areas, the date of designation (s. 23(5));

and provided that:

1. No reasonable alternative exists for such access; and,
2. Continued use will have minimal environmental impact (s. 23(5)).

Other Activities

The Minister may authorize any other activity, even if otherwise prohibited by the Act and Regulations, to achieve responsible management, preservation or restoration of a wilderness area (s. 19). (For example, for the management of an invasive, exotic species).

Pre-Existing Interests

All property rights and land use commitments (for example, mineral rights, campsite leases) that pre-date the original, February 9, 1993 moratorium for the 31 areas which are now designated as wilderness areas will be honoured until their expiry, lawful termination or cancellation, and they may be renewed. If there are pre-existing interests in any new wilderness areas created under the Act, those interests will also be honoured. The Minister may issue a license to the holder of a pre-existing interest to carry out activities that would otherwise be prohibited, if the activities are necessary for the exercise of the interest and do not degrade the wilderness area (s.25).

ENFORCEMENT

There are a number of provisions of the Act dealing with aspects of enforcement:

Enforcement Officers

Wildlife Act conservation officers, town police, RCMP or persons designated by the Minister are authorized to enforce the Act. (s. 8). The prohibitions under the Act do not apply to enforcement officers if it is necessary for them to violate the prohibitions to carry out their duties (ss. 18 and 19).

Offences

It is an offence under the Act to engage in a prohibited activity (s. 17), to fail to comply with an order or license (s. 28) or to deface or remove a posted sign (s. 27).

Photo: Oliver Maas

Defences

No person shall be convicted of an offence if the person can show that due diligence was exercised to prevent the offence (s. 31).

Notice

A person may be served notice in person, by mail (five days), or by notice posted on the land affected under the Act (where the person cannot be identified or their address is not known) (s. 29).

Penalties

Maximum Fines (s. 30)

	First Offence	Subsequent Offence
Corporations	$1,000,000	$2,000,000
Individuals	$500,000 and/ or 6 months jail	$1,000,000 and/ or 12 months jail

In addition to the fine, the Court may order the offender to pay an equivalent to the monetary benefits that were earned as a result of committing the offence. (s. 30).

In addition, the Court may order forfeiture (i.e. loss of or surrender) of anything seized in relation to the offence (s. 32). Things seized (for example, vehicle, equipment, etc.) may be retained until fines are paid (s.33).

In addition, the Court may impose orders (s. 34):

1. Prohibiting the offender from engaging in an activity that may result in the offence being repeated;
2. Directing the offender to remedy the damage;
3. Directing the offender to compensate the Minister for any costs incurred from remedial or preventive action taken;
4. Requiring posting a bond to ensure compliance with the order.

The offender may apply to the Court to have the order changed or revoked. (s.35).

Photo: Oliver Maass

Employers'/Directors' Liability

Employers are liable for offences committed by the employees unless the employee committed the offence without the knowledge or consent of the employer (s. 31).

Directors, officers and agents of companies can be charged with offences committed by the Company (whether or not the Company is prosecuted), if they participated in, or went along with, or turned a blind eye to, the offence (s. 31).

Limitation Period

The prosecution of an offence must begin within two years after the offence was committed or, when it was not known that the offence occurred, two years after the enforcement officer or the Minister (whichever occurs first) became aware of the offence. (s.36).

For More Information

Publications:

- *Wilderness Areas Protection Act*
  visit: www.gov.ns.ca/legi/legc or contact NSDEL's Protected Areas Branch
- *Keep it Wild—A Guide for Low Impact Recreation in Nova Scotia's Wilderness Areas*
  visit: www.gov.ns.ca/enla/pubs and search for 'Keep it Wild' or contact: Protected Areas Branch or regional offices of NSDEL or NSDNR
- Maps of individual Wilderness Areas (scale varies)
  visit the NSDNR Library, 3rd Floor, 1701 Hollis St., Halifax, Nova Scotia;
  call: (902) 424-8633; or
  E-mail: nsdnrlib@gov.ns.ca

General Inquiries:

Protected Areas Branch:
NSDEL, Box 697, Halifax, N.S., B3J 2T8
Tel. (902) 424-2375
E-mail: protectedareas@gov.ns.ca
Website: www.gov.ns.ca/enla

Protected Areas Branch - Eastern Region:
Box 714, 295 Charlotte Street
Sydney, N.S. B1P 6H7
Tel. (902) 563-2100

Protected Areas Branch - Western Region:
60 Logan Road,
Bridgewater, N.S. B4V 3J8
Tel. (902) 543-4685

Provincial Crown Land Access and Wilderness Area Enforcement:
Any District or Regional Office of NSDNR

Photography and illustrations: NSDEL and NSDNR, unless otherwise noted.

All background watercolour paintings (details) by Alice Reed:
Front Cover - *Purling Mist, Trout River*, 1998.
Page 3 - *Evening Cirrus, Cloud Lake*, 1997
Page 5 - *Meadow and Drumlins, Boggy Lake*, 1997
Page 9 - *Dawn, Terrence Bay*, 1996

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Your feedback is welcome—and please help keep our wilderness areas wild!

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